

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

IN RE:	)	Chapter 11
	)	
EASTERN LIVESTOCK CO., LLC	)	Case No. 10-93904-BHL-11
	)	
Debtor.	)	Hon. Basil H. Lorch III

**OBJECTION TO JOPLIN AND SUPERIOR'S RESPONSE TO  
FIFTH THIRD'S LIMITED STATEMENT**

Fifth Third Bank ("Fifth Third"), by and through undersigned counsel, hereby files this Objection to the Response to Fifth Third Bank's "Limited Statement" on Purchase Money Claims Report Trust Issues [Dkt. 854] (the "Superior-Joplin Response") filed by Joplin Regional Stockyards ("Joplin") and Superior Livestock Auction, Inc. ("Superior"), and in support of such Objection states as follows:

**Background**

1. On May 23, 2011, the Trustee filed his Purchase Money Claims Report, Motion to Transfer Funds and Notice of Release of Proceeds from Account [Dkt 501] (the "Purchase Money Claims Report").

2. Certain parties in interest, including Stockman Oklahoma Livestock Marketing, Inc. ("SOLM"), Crumpler Bros. ("Crumpler"), and the Bank of Kremlin ("Kremlin/Kuehny"), objected to the Purchase Money Claims Report, in part relying on a theory of "constructive trust" as a means to defeat the Trustee's asserted interests in cattle and cattle proceeds.

3. On June 23, 2011, the Trustee filed his Reply to Objections to Purchase Money Claims Report [Dkt 564] (the "Purchase Money Reply"). The Purchase Money Reply asserts, in relevant part, that constructive trust arguments such as those advanced by SOLM, Crumpler, and Kremlin/Kuehny, must fail as a matter of law.

4. On July 1, 2011, this Court entered the First Order Regarding Trustee's Purchase Money Claims Report [Dkt 587] (the "First Order"), requiring certain parties in interest to file proposed scheduling orders for proposed proceedings to resolve the objections raised by such parties in interest.

5. On July 25, 2011, this Court entered that certain Scheduling Order Regarding Contested Matter Involving Trustee's Purchase Money Claims Report and Objections Filed by SOLM, Crumpler Bros., Kuehny and the Bank of Kremlin [Dkt 622] (the "Scheduling Order"). The Scheduling Order was entered pursuant to the First Order, and expressly notes that certain issues raised in consideration of the Purchase Money Claims Report and certain objections thereto remain unresolved -- particularly objections related to the Trustee's assertion that constructive trust arguments asserted by certain objectors fail as a matter of law.

6. Pursuant to the Scheduling Order, parties in interest were required to file legal memorandum stating their position on whether "applicable state law can operate to impose a constructive trust over proceeds of the Debtor's sale of cattle absent a prepetition judicial determination impressing such a constructive trust over Debtor's assets" (the "Dispositive Issue"). Such memoranda were to be filed on or before September 30, 2011, with any response to such memoranda due on or before October 14, 2011.

7. On September 30, 2011, the date memoranda were due pursuant to the Scheduling Order, this Court entered the Agreed Motion to Extend Deadlines in Scheduling Order Regarding Contested Matters Involving Trustee's Purchase Money Claims Report and Objections filed by SOLM, Crumpler Bros., Kuehny and the Bank of Kremlin [Dkt. 733] (the "Extension Order"). Pursuant to the Extension Order, all dates in the Scheduling Order were extended for an additional thirty (30) days. Accordingly, pursuant to the Extension Order, memoranda on the

Dispositive Issue were to be filed no later than October 31, 2011, with responses to such memoranda due no later than November 14, 2011.

8. Fifth Third Bank filed its Limited Statement and Memorandum in Support of Trustee's Omnibus Reply to Objections to Purchase Money Claims Report [Dkt. 787] (the "Limited Statement") in accordance with the Scheduling Order and the Extension Order on October 28, 2011. The Limited Statement indicates Fifth Third's support for the position espoused by the Trustee in the Purchase Money Reply with respect to the Dispositive Issue.

### **Statement of Objection**

9. In the Superior-Joplin Response, Superior and Joplin note that, pursuant to the Final order, "the parties have agreed to litigate specific "reserved objections" in separate *contested matters* or adversary proceedings." (Superior-Joplin Response at ¶ 8(a), emphasis added). It is in accordance with the resolution of just such a reserved objection, in just such a contested matter, that Fifth Third filed its Limited Statement.

10. As is made clear by both the First Order and the Scheduling Order, issues related to the Purchase Money Claims Report *were*, in fact, outstanding -- notwithstanding Superior and Joplin's assertions to the contrary. The Scheduling Order and the Extension Order were entered by this Court in pursuit of a resolution of such outstanding issues. The Limited Statement was both timely and appropriately filed in accordance with both the Scheduling Order and the Extension Order. Accordingly, the relief<sup>1</sup> requested by Superior and Joplin in the Superior-

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<sup>1</sup> It is unclear what relief Superior and Joplin may be seeking -- neither party moves this Court to strike any pleading filed by Fifth Third. Rather, it appears that Superior and Joplin are merely seeking permission to "ignore", and requesting this Court to similarly ignore, pleadings filed by Fifth Third with respect to the Dispositive Issue.

Joplin Response is both incorrect and inappropriate, and Fifth Third respectfully requests that such relief be DENIED.

November 28, 2011

Respectfully submitted,

/s/ Randall D. LaTour

Randall D. LaTour (*admitted pro hac vice*)

Vorys, Sater, Seymour and Pease LLP

52 East Gay Street

Columbus, Ohio 43215

Telephone: (614) 464-8290

Facsimile: (614) 719-4821

Email: [rldatour@vorys.com](mailto:rldatour@vorys.com)

*Attorneys for Fifth Third Bank*

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 28th day of November, 2011, a copy of the foregoing was served electronically through the Court's CM/ECF System to the following parties who are listed on the Court's Electronic Mail Notice List:

- David L. Abt davidabt@mwt.net
- Amelia Martin Adams aadams@dlgfir.com
- John W Ames jwa@gdm.com,  
shm@gdm.com;tlm@gdm.com;rtrowbridge@kslaw.com
- Jerald I. Ancel jancel@taftlaw.com, ecfcclerk@taftlaw.com;krussell@taftlaw.com
- Christopher E. Baker cbaker@hklawfirm.com, thignight@hklawfirm.com
- T. Kent Barber kbarber@dlgfir.com, dlgecf@dlgfir.com;dlgecf@gmail.com
- Robert A. Bell rabell@vorys.com, dmchilelli@vorys.com
- C. R. Bowles crb@gdm.com, shm@gdm.com
- Steven A. Brehm sab@gdm.com, bfb@gdm.com
- Kent A Britt kabritt@vorys.com, cbkappes@vorys.com
- Lisa Koch Bryant courtmail@fbhlaw.net
- James M. Carr james.carr@bakerd.com, patricia.moffit@bakerd.com
- John R. Carr jrciii@acs-law.com, sfinnerty@acs-law.com
- Deborah Caruso dcaruso@dalee.com, mthomas@dalee.com
- Bret S. Clement bclement@acs-law.com, sfinnerty@acs-law.com
- Jason W. Cottrell jwc@stuartlaw.com
- Kirk Crutcher kcrutcher@mcs-law.com, jparsons@mcs-law.com;cmarsall@mcs-law.com
- Jack S Dawson jdawson@millerdollarhide.com,  
jowens@millerdollarhide.com;receptionist@millerdollarhide.com
- Dustin R. DeNeal dustin.deneal@bakerd.com,  
patricia.moffit@bakerd.com;sarah.herendeen@bakerd.com
- Laura Day DelCotto ldeltotto@dlgfir.com,  
dlgecf@dlgfir.com;dlgecf@gmail.com
- David Alan Domina dad@dominalaw.com,  
KKW@dominalaw.com;efiling@dominalaw.com
- Daniel J. Donnellon ddonnellon@ficlaw.com, knorwick@ficlaw.com
- Trevor L. Earl tearl@rwsvlaw.com
- Shawna M Eikenberry shawna.eikenberry@bakerd.com, sarah.herendeen@bakerd.com
- Jeffrey R. Erler jeffe@bellnunnally.com
- Sarah Stites Fanzini sfanzini@hopperblackwell.com, mroth@hopperblackwell.com
- Robert H. Foree robertforee@bellsouth.net
- Sandra D. Freeburger sfreeburger@dsf-atty.com, smattingly@dsf-atty.com
- Melissa S. Giberson msgiberson@vorys.com
- Jeffrey J. Graham jgraham@taftlaw.com,  
ECFClerk@taftlaw.com;krussell@taftlaw.com;aolave@taftlaw.com

- Terry E. Hall terry.hall@bakerd.com, sharon.korn@bakerd.com;sarah.herendeen@bakerd.com
- John David Hoover jdhoover@hooverhull.com
- John Huffaker john.huffaker@sprouselaw.com, lynn.acton@sprouselaw.com;rhonda.rogers@sprouselaw.com
- Jeffrey L Hunter jeff.hunter@usdoj.gov, USAINS.ECFBankruptcy@usdoj.gov
- Jay Jaffe jay.jaffe@bakerd.com, tracy.whitman@bakerd.com;sarah.herendeen@bakerd.com
- James Bryan Johnston bjtxas59@hotmail.com, bryan@ebs-law.net
- Todd J. Johnston tjohnston@mcjllp.com
- Jill Zengler Julian Jill.Julian@usdoj.gov
- Edward M King tking@fbtlaw.com, dgioffre@fbtlaw.com
- James A. Knauer jak@kgrlaw.com, hns@kgrlaw.com
- Erick P Knoblock eknoblock@daleeke.com
- Theodore A Konstantinopoulos ndohbky@jbandr.com
- Randall D. LaTour RDLatour@vorys.com, khedwards@vorys.com;bjtobin@vorys.com
- David A. Laird david.laird@moyewwhite.com, lisa.oliver@moyewwhite.com;deanne.stoneking@moyewwhite.com
- David L. LeBas dlebas@namanhowell.com, koswald@namanhowell.com
- Elliott D. Levin robin@rubin-levin.net, edl@trustesolutions.com;edl@trustesolutions.net
- Elliott D. Levin edl@rubin-levin.net, atty\_edl@trustesolutions.com
- Kim Martin Lewis kim.lewis@dinslaw.com, lisa.geeding@dinslaw.com;patrick.burns@dinslaw.com
- James B. Lind jblind@vorys.com
- Karen L. Lobring lobring@msn.com
- John Hunt Lovell john@lovell-law.net, sabrina@lovell-law.net;shannon@lovell-law.net;paula@lovell-law.net
- Harmony A Mappes harmony.mappes@bakerd.com, betsy.smith@bakerd.com;sarah.herendeen@bakerd.com
- John Frederick Massouh john.massouh@sprouselaw.com
- Michael W. McClain mike@kentuckytrial.com, laura@kentuckytrial.com
- Kelly Greene McConnell lisahughes@givenspursley.com
- James Edwin McGhee mcghee@derbycitylaw.com, bellriott@derbycitylaw.com;patenaude@derbycitylaw.com
- William Robert Meyer rmeyer@stites.com
- Christie A. Moore cm@gdm.com, ljs2@gdm.com
- Allen Morris amorris@stites.com, dgoodman@stites.com
- Judy Hamilton Morse judy.morse@crowedunlevy.com, ecf@crowedunlevy.com;donna.hinkle@crowedunlevy.com;karol.brown@crowedunlevy.com
- Walter Scott Newbern wsnewbern@msn.com

- Shiv Ghuman O'Neill shiv.oneill@bakerd.com
- Matthew J. Ochs kim.maynes@moyewhite.com
- Michael Wayne Oyler moyler@rwsvlaw.com
- Ross A. Plourde ross.plourde@mcafeetaft.com, erin.clogston@mcafeetaft.com
- Wendy W Ponader wendy.ponader@bakerd.com, sarah.herendeen@bakerd.com
- Timothy T. Pridmore tpridmore@mcjllp.com, lskibell@mcjllp.com
- Jeffrey E. Ramsey jramsey@hopperblackwell.com, mhaught@hopperblackwell.com
- Eric C Redman ksmith@redmanludwig.com, kzwickel@redmanludwig.com
- Joe T. Roberts jratty@windstream.net
- Susan K. Roberts skr@stuartlaw.com, lbt@stuartlaw.com
- Mark A. Robinson mrobinson@vhrlaw.com, dalbers@vhrlaw.com
- Jeremy S Rogers Jeremy.Rogers@dinslaw.com, joyce.jenkins@dinslaw.com
- John M. Rogers johnr@rubin-levin.net, susan@rubin-levin.net
- Joseph H Rogers jrogers@millerdollarhide.com, cdow@millerdollarhide.com
- James E Rossow jim@rubin-levin.net, susan@rubin-levin.net;ATTY\_JER@trustesolutions.com
- Thomas C Scherer tscherer@binghammchale.com, mmcclain@binghammchale.com
- Ivana B. Shallcross ibs@gdm.com
- James E. Smith jsmith@smithakins.com, legalassistant@smithakins.com
- William E Smith wsmith@k-glaw.com, pballard@k-glaw.com
- Robert K Stanley robert.stanley@bakerd.com
- Joshua N. Stine kabritt@vorys.com
- Andrew D Stosberg astosberg@lloydmc.com, bmarks@lloydmc.com
- Meredith R. Thomas mthomas@daleeke.com
- John M. Thompson john.thompson@crowedunlevy.com, jody.moore@crowedunlevy.com, donna.hinkle@crowedunlevy.com
- Kevin M. Toner kevin.toner@bakerd.com, crystal.hansen@bakerd.com; judy.ferber@bakerd.com
- U.S. Trustee ustpreion10.in.ecf@usdoj.gov
- Andrea L Wasson andreawassonatty@gmail.com
- Stephen A. Weigand sweigand@ficlaw.com
- Charles R. Wharton Charles.R.Wharton@usdoj.gov, Charles.R.Wharton@usdoj.gov
- Sean T. White swwhite@hooverhull.com, vwilliams@hooverhull.com
- Jessica E. Yates jyates@swlaw.com, jmilelli@swlaw.com; docket\_den@swlaw.com
- James T Young james@rubin-levin.net, ATTY\_JTY@trustesolutions.com; lemerson@rubin-levin.net; carmen@rubin-levin.net

/s/ Randall D. LaTour

Randall D. LaTour